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M. Blatch

Civ. Pers.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: 191014

DATE: March 10, 1978

MATTER OF: Gary G. Dahlgren - Recrediting of Sick Leave

DIGEST: Where record is clear that agency intended to transfer ASCS county committee employee to regular civil service position within Department of Agriculture without forfeiture of accumulated sick leave, and because forfeiture which resulted is in direct contravention of the clear statutory mandate to avoid forfeiture when experienced ASCS county committee employees are recruited to fill civil service positions within the Department of Agriculture, we would interpose no objection if the agency corrected employee's records to reflect transfer without break in service, and charged 19-day period to authorized leave of absence without pay.

This action concerns a request for reconsideration of the claim of Mr. Gary G. Dahlgren for recredit of 1,439 hours of sick leave forfeited upon his transfer from the Agricultural Stabilization and Conservation Service (ASCS) to the Agricultural Marketing Service (AMS) within the Department of Agriculture. Mr. Dahlgren's claim was disallowed by our Claims Division by settlement dated November 12, 1976.

The record shows that Mr. Dahlgren had been employed by the Wright County ASCS committee in Clarion, Iowa, for over 21 years, and had accumulated 1,439 hours of sick leave. In 1974, Mr. Dahlgren was transferred to AMS. Prior to his transfer, Mr. Dahlgren and the Wright County Executive Director checked with the ASCS State office in Des Moines, Iowa, regarding the proper procedure for transferring his accumulated sick leave to his new position.

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They were advised that his sick leave would be transferred if he reported to AMS with a break in service of no more than 3 years. Accordingly, it was agreed that Mr. Dahlgren would leave ASCS on September 23, 1974, and report to AMS on October 13, 1974, 19 days later. Subsequently, Mr. Dahlgren was advised that the 1,439 hours of sick leave had been forfeited because of the 19-day break in service between his employment at ASCS and AMS.

The agency advises that an error occurred in determining the proper procedures for transferring Mr. Dahlgren's sick leave to his new position. The ASCS state office had apparently been under the impression that Mr. Dahlgren was entitled to a recredit of sick leave under the same conditions that apply to regular Federal employees. That is, recredit will be given when the break in service between positions does not exceed 3 years. 5 C.F.R. 630.502(b)(1) (1977). In fact, however, ASCS county committee employees are not Federal employees and transfer of their sick and annual leave is governed by separate statute and regulations. As discussed below, under these separate authorities, the correct procedure for transferring Mr. Dahlgren's sick leave was to arrange for his transfer to AMS without any break in service.

Although paid with Federal funds and governed by Department of Agriculture regulations which closely parallel those governing regular Federal employees, ASCS county committee employees are not Federal employees within the meaning of 5 U.S.C. 2105 (1976), and are not generally subject to the leave provisions of chapter 63 of title 5 of the United States Code. Thus, prior to 1968, leave earned as a county committee employee was not transferable when the employee moved from an ASCS position to a regular civil service position. In 1968, however, Public Law 90-367 amended chapter 63 of title 5 to provide that sick and annual leave earned as a county committee employee could be transferred when the ASCS employee moved to a regular civil service position without a break in service. 5 U.S.C. 6312 (1976). Consistent with Public Law 90-367, Department of Agriculture regulations provide that when a leave earning ASCS county employee moves to a civil service position, and there is no break in service, leave accumulated as an ASCS employee will be transferred to the new position. Department Personnel Manual, chapter 630, 5-1 and 5-2 (March 28, 1969).

One of the express purposes of Public Law 90-367 is to facilitate the transfer of county committee employees to regular civil

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service positions within the Department of Agriculture by eliminating the requirement that county committee employees forfeit sick leave accumulated under ASCS system. Congress recognized that the hardship caused by these forfeitures made it difficult for the Department of Agriculture to recruit experienced county committee employees for regular civil service positions. As noted in the House Report:

"One of the most valuable sources of trained personnel for often hard-to-fill positions in the Department of Agriculture is, quite naturally, the very efficient and knowledgeable corps of employees of Agricultural Stabilization and Conservation county committees and of associations of producers under the Agricultural Adjustment Act. This reservoir of talent and expertise cannot be effectively used, however, because many such employees can accept appointments in the Department of Agriculture only at severe personal sacrifice."

H.R. Rep. No. 1371, 90th Cong., 2d Sess. 3 (1968). See also, S. Rep. No. 365, 90th Cong., 1st Sess. 2 (1967). Thus, there is a clear congressional intent to prevent forfeiture of sick leave when experienced ASCS county committee employees transfer to regular civil service positions within the Department of Agriculture.

The record is clear in this case that the intent of the agency and of Mr. Dahlgren was to accomplish his transfer from ASCS without forfeiture of his accumulated sick leave. Under these circumstances, and because the forfeiture of leave was in direct contravention of the clear statutory mandate to avoid forfeiture when experienced ASCS county committee employees are recruited to fill civil service positions within the Department of Agriculture, we would interpose no objection if the agency corrected Mr. Dahlgren's records to reflect a transfer without a break in service, and charged the 19-day period to an authorized leave of absence without pay.
B-112802, February 2, 1953.

Deputy

R. F. Kistner
Comptroller General
of the United States